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October 2, 1998

Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

Re: Guidance for Industry: Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act -- Docket #98D-0265

Dear Sir or Madam:

Perrigo Company submits these comments in response to the Food and Drug Administration's issuance of the guidance document entitled, "Qualifying For Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act." FDA released the document in June 1998 to offer guidance to the pharmaceutical industry on how the Agency intended to implement Section 111 of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), which created Section 505A of the Federal Food, Drug, and Cosmetic Act (the FDC Act), 21 U.S.C. § 355A.

Perrigo is the nation's largest private-label manufacturer of over-the-counter drug products, serving numerous chain drugstores and supermarkets. Most of these OTC drugs are marketed under the existing OTC monograph system. A smaller, but growing, volume of Perrigo's OTC products are covered by abbreviated new drug applications (ANDAs).

Perrigo will comment specifically on the guidance document and make several recommendations. However, first, we reiterate a point that was made in our comments, dated May 13, 1998, to Docket #98N-0056 relating to the draft "List of Drugs for Which Additional Pediatric Information May Produce Health Benefits in the Pediatric Population." We have attached those comments to this letter, but will summarize the contents here.

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Perrigo is concerned that FDA has included OTC drug products, both monographed and non-monographed, in the final list of drugs that might be eligible to obtain periods of pediatric exclusivity. We recognize that the placement of the drug on this list does not ensure that the drug will receive exclusivity, and that certain statutory conditions must be met before FDA grants exclusivity. However, Perrigo opposes the inclusion of any OTC drug product on the list and opposes all attempts to provide pediatric exclusivity to OTC drug products. We support the comments submitted by the Nonprescription Drug Manufacturers Association (NDMA), the Generic Pharmaceutical Industry Association (GPIA), the National Association of Pharmaceutical Manufacturers (NAPM), and the National Pharmaceutical Alliance (NPA) to Docket #98N-0056, which provides compelling arguments for deleting all OTC drugs from FDA's final list.

As stated in docket 98N-0056, the Pediatric Priority list was developed to allow pediatric exclusivity for drugs that would represent "a significant improvement compared to marketed products labeled for use in the treatment, diagnosis, or prevention of a disease in the relevant pediatric population," and which are "in a class or for an indication for which additional therapeutic options for the pediatric population are needed." We believe that OTC drugs do not meet these requirements nor do they meet any of the criteria established by FDA for inclusion in the final listing.

Perrigo wishes to make two comments on FDA's draft guidance document (docket #98D-0265). In section VI.B. of the document, FDA states that it will publish a list of those approved drugs for which it has issued a written request for studies. We agree that written requests for pediatric studies should be made public. However, Perrigo recommends that FDA improve the notification procedures so that information is provided in a timely manner. This could be accomplished by the Agency directly contacting applicants who have pending ANDAs which are affected by an additional exclusivity period. For example, we have learned that FDA granted pediatric exclusivity extensions to NDAs #19-771, #19-842, #19-833, #20-601, #20-267, and #20-135 for certain ibuprofen products on September 16, 1998. Unfortunately, this information was not posted on the FDA website prior to the date of the actual determination to grant the extension. In addition, when FDA grants pediatric exclusivity, the Agency should contact ANDA applicants and/or post timely information on the specific age groups affected and the conclusions of the studies conducted. This information may be critical to ANDA filers in order to determine if a second six-month exclusivity extension will be possible for the same listed drug product.

Another issue of interest to Perrigo is FDA's proposed implementation of the statutory provision on multiple six-month periods of pediatric exclusivity, described in section X.B. of the draft guidance document.

Section 505A provides 6 months of exclusivity for a drug whose manufacturer conducts specific clinical studies in pediatric populations. Pediatric exclusivity can only be added to existing

exclusivity, such as 3 or 5 years of "Waxman-Hatch exclusivity," orphan drug exclusivity, or patent protection.

The Modernization Act limits the 6-month exclusivity period to one grant per drug product. FDA may nevertheless award an extra 6 months of exclusivity if the applicant submits a supplemental new drug application (sNDA) for a second pediatric study in accordance with the statutory requirements. 21 U.S.C. § 355A(h). However, the Modernization Act states that FDA may not add this second 6-month period to patent protections or orphan drug exclusivity afforded under the FDC Act; the additional period of pediatric exclusivity may attach to 3 years of Waxman-Hatch exclusivity.

Perrigo is particularly concerned with the application of the multiple-grant provision to NDA products that have received 3 years of Waxman-Hatch exclusivity due to an Rx-to-OTC switch (assuming certain statutorily-prescribed conditions are met). The net effect will likely be that a drug product's exclusivity is extended an additional year, thereby precluding generic competition for up to 4 years. We are concerned that NDA holders will artificially segment their submission of supplements to take unfair advantage of this allowance.

For the reasons to be discussed, Perrigo recommends that FDA limit any multiple grant of pediatric exclusivity given to the aforementioned type of NDA product to the specific pediatric indication described in the sNDA and not extend the pediatric exclusivity to cover the entire drug product. Furthermore, we suggest that FDA grant a multiple period of pediatric exclusivity only when there are legitimate reasons why the "new" data was not provided in the original sNDA. It is also critical for FDA to notify applicants who have relevant pending ANDAs at the time a second request letter is issued, and to provide complete information at the time a second period is granted.

We will provide an example to illustrate the potential problem and recommend a solution. FDA recently granted a 6-month period of pediatric exclusivity to McNeil Consumer Products Co.'s Children's Motrin (ibuprofen) drug products There were two separate NDAs submitted for slightly different products. This decision extended McNeil's 3-year Waxman-Hatch exclusivity for these products, which was set to expire on June 16, 1998, to December 16, 1998. (FDA granted McNeil 3-year exclusivity after it switched its prescription versions of the Children's Motrin products to OTC use and complied with specific requirements.) However, because the statutory provision permits the attachment of an additional 6-month period of exclusivity if certain conditions are met, McNeil might be able to obtain a second period of exclusivity, thereby preventing generic competition of its Children's Motrin products until June 16, 1999.

In order to prevent the aforementioned unfair and anti-competitive result, Perrigo recommends that FDA limit any pediatric exclusivity award to cover only the pediatric indication or use in a new age group, and not the entire drug product. In the case of Motrin, FDA could approve

a generic version of Children's Motrin, so long as the applicant does not label or promote the product for use in the new pediatric age range. This approach achieves a fair balance between the divergent interests of the brand name and generic companies, and is consistent with Congressional intent to encourage pediatric research while ensuring that generic products reach the market in a timely manner.

FDA has latitude in implementing the pediatric exclusivity provisions because there is little legislative history on this subject and Congress did not specifically provide Waxman-Hatch exclusivity for an Rx-to-OTC switch. Thus, Perrigo requests that the Agency consider the intent behind Waxman-Hatch exclusivity when it reviews pediatric exclusivity issues, and work towards a fair and equitable resolution when evaluating pediatric exclusivity requests for Rx-to-OTC drug products.

* * * * * * * *

Perrigo appreciates the opportunity to submit comments to the guidance document. Please feel free to contact me at 616-673-7595 if you have any questions.

Sincerely,

David A. Jespersen
Director, Technical Services
Perrigo Company

Attachment

cc: Ms. Khyati N. Roberts
Executive Operations Staff (HFD-6)
Center for Drug Evaluation and Research
Food and Drug Administration

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PERRIGO®

May 13, 1998

Dockets Management Branch (HFA-305)
Food & Drug Administration
12420 Parklawn Drive, Room 1-23
Rockville, MD 20857

RE: Comment Regarding the Inclusion of OTC Drugs on the "Draft List of Drugs For Which Additional Pediatric Information May Produce Health Benefits In the Pediatric Population" (Docket No. 98N-0056)

Dear Sir or Madam:

The Perrigo Company submits these comments in response to the Food & Drug Administration's "Draft List of Drugs For Which Additional Pediatric Information May Produce Health Benefits In the Pediatric Population".

Perrigo is the nation's largest private label manufacturer of OTC drug products, serving numerous chain drugstores and supermarkets. Most of these OTC drugs are marketed under the existing OTC monograph system. A smaller, but growing, volume of Perrigo's OTC products are covered by approved Abbreviated New Drug Applications (ANDAs). Perrigo does not currently market or distribute any prescription drug products, however, we are concerned that non-monograph OTC drug products have been included in the initial working list of drugs that may be eligible to receive an extension of any existing patent or exclusivity should additional studies meeting the requirements be requested and supplied. The draft listing also includes drug products covered under Final OTC Monographs.

We understand that the draft list and the final list to be published by May 20, 1998, are designed solely to satisfy the requirement of 21 U.S.C. 355A(b), and that inclusion of a drug on the list does not necessarily mean that the drug is entitled to pediatric exclusivity. Only those drugs which have an unexpired patent or exclusivity may qualify for the 180 day extension assuming that studies are requested and submitted which meet FDA requirements.

The law was clearly written to allow this exclusivity extension only to drugs which would represent "a significant improvement compared to marketed products labeled for use in the treatment, diagnosis, or prevention of a disease in the relevant pediatric population," and which are "in a class or for an indication for which additional therapeutic options for the pediatric population are needed". We believe that OTC drugs do not meet these requirements nor do they meet any of the criteria established by FDA for inclusion in the final listing.

Perrigo supports the opposition to including OTC drug products in the final listing as expressed in letters to this docket from the Nonprescription Drug Manufacturers Association (NDMA), the Generic Pharmaceutical Industry Association (GPIA), the National Association of Letter to Pharmaceutical Manufacturers (NAPM), and the National Pharmaceutical Alliance (NPA).

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These letters provide compelling arguments for deleting all OTC drugs from the final list as they clearly do not meet the FDA stated criteria for inclusion. However, if OTC products are included in the final listing solely due to the perception that additional information on pediatric use is needed, then the final list should be formatted to clearly indicate that NDAs for OTC drug products do not qualify for exclusivity extension under the law. We believe that this will eliminate potential confusion in interpretation of the final listing, and avoid unnecessary delays in approval of ANDAs for OTC drug products which offer significant cost savings for consumers.

Perrigo thanks FDA for the opportunity to submit their comments. Please feel free to call me at 616-673-7595 if you have any questions or if Perrigo can be of further assistance.

Respectfully Submitted,
PERRIGO COMPANY

David A. Jespersen
Director, Technical Services

cc:	Murray Lumpkin, MD	Deputy Director, CDER
	Jane Axelrad, Esq.	Associate Director for Policy, CDER
	Khyati Roberts	Executive Operations Staff, CDER
	Rosemary Roberts	Pediatric Sub-Committee, CDER
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	Elizabeth Dickenson, Esq.	Office of Chief Counsel, FDA

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